

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

RED ROCK RESORTS, INC.;

and

STATION HOLDCO LLC;

and

STATION CASINOS LLC;

and

**FP HOLDINGS, L.P. d/b/a
PALMS CASINO RESORT AND PALMS PLACE, and
FIESTA PARENTCO, L.L.C., General Partner;**

and

**NP BOULDER LLC d/b/a
BOULDER STATION HOTEL & CASINO;**

and

**NP FIESTA LLC d/b/a
FIESTA RANCHO HOTEL & CASINO;**

and

**NP LAKE MEAD LLC d/b/a
FIESTA HENDERSON CASINO HOTEL;**

and

**NP PALACE LLC d/b/a
PALACE STATION HOTEL & CASINO;**

and

**NP RED ROCK LLC d/b/a
RED ROCK CASINO, RESORT & SPA;**

and

**NP SANTA FE LLC d/b/a
SANTA FE STATION HOTEL & CASINO;**

and

**NP SUNSET LLC d/b/a
SUNSET STATION HOTEL & CASINO;**

and

**NP TEXAS LLC d/b/a
TEXAS STATION GAMBLING HALL AND HOTEL;**

and

**STATION GVR ACQUISITION, LLC d/b/a
GREEN VALLEY RANCH RESORT SPA CASINO;**

**collectively, a Single Employer and
Single Integrated Enterprise**

and

**LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS a/w
UNITE HERE INTERNATIONAL UNION**

and

THOMAS STALLINGS

Party in Interest

**Cases 28-CA-228052
28-CA-228944
28-CA-247602
28-CA-248464
28-CA-249203
28-CA-249576
28-CA-251083
28-CA-251254
28-CA-251803
28-CA-252404
28-CA-252964
28-CA-256630
28-CA-257778
28-CA-260167
28-CA-260169
28-CA-260187
28-CA-260199
28-CA-260207
28-CA-260209
28-CA-260216
28-CA-261666
28-CA-262465
28-CA-262973
28-CA-262977
28-CA-262980**

28-CA-262982
28-CA-262987
28-CA-263582
28-CA-264135
28-CA-264297
28-CA-264465
28-CA-264469
28-CA-264476
28-CA-264612
28-CA-264619
28-CA-264626
28-CA-264631
28-CA-264638
28-CA-266556
28-CA-266987
28-CA-267067
28-CA-268930
28-CA-268957
28-CA-268958
28-CA-268960
28-CA-269516
28-CA-269517
28-CA-269519
28-CA-269520
28-CA-269959
28-CA-269962
28-CA-269965
28-CA-271251
28-CA-271608
28-CA-273812
28-CA-276735
28-CA-276745
28-CA-277335

RED ROCK RESORTS, INC.;

and

STATION HOLDCO LLC;

and

STATION CASINOS LLC;

and

**NP SUNSET LLC d/b/a
SUNSET STATION HOTEL & CASINO;**

and

**FP HOLDINGS, L.P. d/b/a
PALMS CASINO RESORT AND PALMS PLACE, and
FIESTA PARENTCO, L.L.C., General Partner;**

and

**NP LAKE MEAD LLC d/b/a
FIESTA HENDERSON CASINO HOTEL;**

and

**STATION GVR ACQUISITION, LLC d/b/a
GREEN VALLEY RANCH RESORT SPA CASINO;**

**collectively, a Single Employer and
Single Integrated Enterprise**

and

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 501, AFL-CIO**

**Cases 28-CA-239331
28-CA-247230
28-CA-260724
28-CA-274303
28-CA-276527**

and

THOMAS STALLINGS

Party in Interest

RED ROCK RESORTS, INC.;

and

STATION HOLDCO LLC;

and

STATION CASINOS LLC;

and

**NP TEXAS STATION LLC d/b/a TEXAS STATION
GAMBLING HALL AND HOTEL;**

**collectively, a Single Employer and
Single Integrated Enterprise**

and

Case 28-CA-245647

MARIA SANJUANA ORTIZ

RED ROCK RESORTS, INC.;

and

STATION HOLDCO LLC

and

STATION CASINOS LLC;

and

**NP PALACE LLC d/b/a PALACE STATION HOTEL &
CASINO**

**collectively, a Single Employer and
Single Integrated Enterprise**

and

Case 28-CA-273936

BLAKE SAARI

ORDER¹

The Respondent's request for special permission to appeal Administrative Law Judge Amita Tracy's August 12, 2021 order denying the Respondent's petition to revoke subpoenas ad testificandum A-1-1D0635D and A-1-1D0RGN1 served on Frank Fertitta III and Lorenzo

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Fertitta is granted. On the merits, the appeal is denied. We find that the Respondent has failed to show that the judge's denial of the petition to revoke the subpoenas was an abuse of discretion, as the subpoenas seek information relevant to the matters at issue, and the Respondent failed to establish any other legal basis for revoking the subpoenas. See *Postal Workers Local 64 (USPS)*, 340 NLRB 912 (2003); *Offshore Mariners United*, 338 NLRB 745 (2002); see also 29 C.F.R. § 102.31(b).

The Respondent's primary argument in support of its special appeal is that the judge erred in misapplying the so-called "apex doctrine," a tool some federal courts use to limit the potential for harassment of high-level corporate executives through pre-trial depositions. The Respondent argues that, under that doctrine, those officials enjoy a rebuttable presumption that subpoenas for their testimony are unduly burdensome, unless the party issuing the subpoena can show that they have unique, personal knowledge of relevant information that cannot be obtained through less intrusive means – a presumption that, the Respondent argues, the General Counsel did not overcome. The Respondent, however, identifies no cases in which the Board has applied such a standard, neither to revoke a subpoena for trial testimony, nor otherwise.

In rejecting the Respondent's argument, we emphasize that we see no evidence that the concerns animating the apex doctrine (potential harassment of high-level corporate officials with little personal knowledge of the matters at issue) are at play here. The judge described, in detail, the disputed subject matters on which the Fertittas may have personal knowledge: among other things, those relating to the alleged unfair labor practices, the requested bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), and the Respondent's employer and single employer status. The Respondent has not demonstrated that the General Counsel issued the

subpoenas to harass the Fertittas or that the subpoenas are unduly burdensome.² See, e.g., *FDIC v. Garner*, 126 F.3d 1138, 1145-46 (9th Cir. 1997) (party petitioning for revocation bears burden of showing harassment and/or undue burden). And the judge has promised that she will not allow the Fertitta testimony, or any other testimony, to be used as a “fishing expedition.” We therefore decline to second guess the judge’s significant discretion to regulate the course of the hearing and direct the creation of the record.³ See, e.g., *Parts Depot, Inc.*, 348 NLRB 152, 152 n.6 (2006), *enfd. mem.* 260 Fed. Appx. 607 (4th Cir. 2008); 29 C.F.R. § 102.35.

Dated, Washington, D.C., October 13, 2021.

LAUREN McFERRAN,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
JOHN F. RING,	MEMBER

² The Respondent has presented no evidence that the Charging Party counsel’s statements regarding the Fertittas in any way reflect the General Counsel’s motives in issuing the subpoenas.

³ Although we have affirmed the judge’s ruling on the subpoenas, this does not preclude the parties from entering into stipulations or agreeing to other measures that would obviate the need for the Fertittas’ testimony.